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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12-CR-813 (PGG)

5 PAUL PAPPAS,

6 Defendant.

Sentencing

7 -----x

8 New York, N.Y.
9 August 16, 2013
10:18 a.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 RUSSELL CAPONE

Assistant United States Attorney

18 WILLKIE FARR & GALLAGHER, LLP

Attorneys for Defendant

19 BY: MARTIN KLOTZ, ESQ.

20 MORGAN J. CLARK, ESQ.

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(In open court; case called)

THE CLERK: Is the government ready?

MR. CAPONE: Yes. Russell Capone for the government.

Good morning, Judge.

THE COURT: Good morning.

THE CLERK: Defendant ready?

MR. KLOTZ: Yes, your Honor. Martin Klotz and Morgan Clark for Mr. Pappas.

THE COURT: Good morning.

All right. In preparation for sentencing, I have read the presentence report dated August 8th, I've read Mr. Klotz' August 5th, 2013 sentencing submission and the exhibits to that submission, including Dr. Drob's report and the letters from Mr. Pappas' family and friends. I've also read the government's August 12th, 2013 submission.

Mr. Klotz, have you read the presentence report and its recommendation and discussed it with Mr. Pappas?

MR. KLOTZ: Yes, your Honor.

THE COURT: Mr. Pappas, have you read the presentence report and its recommendation and discussed it with Mr. Klotz?

THE DEFENDANT: Yes, I have.

THE COURT: Mr. Klotz, do you have any objections to the factual portions of the presentence report?

MR. KLOTZ: I think we sent a few in and they were included in the revised report, so nothing further, your Honor.

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1 THE COURT: All right. Mr. Capone, does the
2 government have any objections to the factual portions of the
3 presentence report?

4 MR. CAPONE: No, your Honor.

5 THE COURT: And I hereby adopt the findings of fact
6 set forth in the presentence report.

7 Although I'm not required to impose sentence in
8 accordance with the Sentencing Guidelines, I am required to
9 consider the recommended range under the guidelines. Here, the
10 probation department applied the fraud guidelines and concluded
11 that Mr. Pappas' base offense level is 7. The offense level
12 was increased by 12 levels because the loss resulting from his
13 conduct was between 200,000 and \$400,000. His offense level
14 was further increased by two levels because he wilfully
15 attempted to obstruct and impede the administration of justice
16 with respect to the investigation of the offense. His offense
17 level was reduced by three levels for acceptance of
18 responsibility, resulting in a total offense level of 18.

19 The probation department determined that Mr. Pappas
20 has no criminal record. Accordingly, he falls into criminal
21 history category I.

22 Offense level 18 at criminal history category I yields
23 a guidelines range of 27 to 33 months' imprisonment.

24 Mr. Klotz, does the defense have any objections to the
25 accuracy of the guidelines calculations in the presentence

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1 report?

2 MR. KLOTZ: No, your Honor.

3 THE COURT: Mr. Capone, does the government have any
4 objections to the calculations regarding the guidelines set
5 forth in the presentence report?

6 MR. CAPONE: No, your Honor.

7 THE COURT: And based upon my independent evaluation
8 of the Sentencing Guidelines, I accept the calculations set
9 forth in the presentence report. Accordingly, I find that the
10 offense level is 18, the criminal history category is I, and
11 the recommended sentencing range is 27 to 33 months'
12 imprisonment.

13 I'll hear from you, Mr. Klotz, as to an appropriate
14 sentence.

15 MR. KLOTZ: Thank you, your Honor.

16 Judge, the single largest issue for consideration at
17 sentencing is the state of Mr. Pappas' mental health and what
18 role that played in the offense and what role it ought to play
19 in a just and fair sentence to be imposed by your Honor today.

20 Nobody disputes that Mr. Pappas has very serious
21 mental health issues. They go back a very long period of time.
22 They were exacerbated by a serious accident in the year 2000.
23 They've persisted since then. He has, until incarceration, in
24 my judgment, never really been properly treated. Part of that
25 is his own fault for not seeking appropriate treatment, but I

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1 think his mental state has been a contributing factor to the
2 conduct here, and the real issue, I don't think anybody
3 disputes that Mr. Pappas has very serious mental health issues.
4 The question is, what role did they play in explaining the
5 offense conduct and in potentially mitigating the sentence.

6 The government cites three -- I think three core facts
7 that, in the government's view, argue that the mental health
8 issues ought to be put to the side and not given any weight in
9 considering an appropriate sentence.

10 Factor -- the first factor is that the offense conduct
11 here required a great deal of planning and took place over an
12 extended period of time. It wasn't an impulse offense.

13 The second factor is that the offense conduct involved
14 deceit and in particular the impersonation of other persons on
15 whose behalf Mr. Pappas claimed unemployment benefits.

16 And the third factor is that Mr. Pappas, knowing of
17 the investigation, obstructed justice.

18 And I'd like to address those three factors in turn
19 and explain why I think Mr. Pappas' mental health really is a
20 mitigating factor with respect to all of those.

21 First, with respect to the fact that the offense was
22 an elaborate offense and was carried out over a period of I
23 believe two years, this was not an offense like a series of
24 bank robberies. Mr. Pappas had an elaborate, albeit in my view
25 misguided and, frankly, nutty view of the conduct in which he

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1 was engaged in which it was, while reprehensible in a moral
2 sense, technically legally permissible. He talked himself into
3 an elaborate theory about he was entitled to put relatives on
4 the payroll even though they didn't do any work.

5 THE COURT: Let me ask you this. I had the sense that
6 these printing companies had been sold at this point. Did he
7 still have a printing company or was this some other business?

8 MR. KLOTZ: He had the printing companies which did
9 some consulting work in the printing business, as I understand
10 it. He also had a number of real estate properties that
11 required management that I believe were done through the aegis
12 of the parent company. So there was business activity. It was
13 not totally a fictitious company. And there were other
14 employees or persons affiliated with the companies. This is
15 not to say that the relatives and friends on whose behalf he
16 claimed unemployment benefits did any genuine work or were paid
17 any money. But Mr. Pappas really viewed himself as, to some
18 degree, akin to somebody who finds lawful ways of minimizing
19 their taxes and you might criticize them for, you know,
20 exploiting loopholes but in their mind they're legal loopholes.
21 We haven't offered this as a defense to the case. You know,
22 Mr. Pappas knew that what he was doing was inappropriate, and
23 he certainly knew that he was under investigation and the
24 government viewed what he was doing as inappropriate. But
25 interestingly enough, the government cites the fact that he

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1 knew he was under investigation and attempted to obstruct
2 justice, and I'll get to that in a minute, but he also talked
3 to the investigating agents and tried to persuade them that
4 what he was doing was lawful. Unsuccessfully, of course,
5 because what he was doing was not lawful, but it's not -- it
6 really reflects in my mind some of the conclusions that
7 Dr. Drob came to in his report. Mr. Pappas is an individual
8 who has delusions of grandiosity. He thought he'd come up with
9 a really clever theory to outsmart the government. He has a
10 hard time distinguishing between fantasy and reality. He
11 doesn't appreciate the boundaries of socially appropriate
12 behavior. And a lot of what was going on was this. It doesn't
13 negate his guilt. He's never, you know, asserted that this
14 negates his guilt. But I think it's an important background
15 factor to be taken into consideration.

16 THE COURT: From my review of the materials in the
17 case, it seems to me that Mr. Pappas has very substantial
18 assets, which raises the question of why it was that he was
19 engaged in a fraud that, while not insignificant in the amount
20 of money that was ultimately taken, doesn't seem that it would
21 be necessary for him to maintain his lifestyle. So can you
22 speak to motive at all?

23 MR. KLOTZ: I mean, I think, frankly, a lot of it has
24 to do with his view of himself as being really clever and came
25 up with a way of legally exploiting loopholes in the system and

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1 it was more for that than the actual income. Although I would
2 also say, on the income side, standing alone, Mr. Pappas has
3 substantial assets, but they're not terribly liquid and his
4 cash flow is not terribly great, and as you know from the
5 presentence report, he's got very serious problems with some of
6 his children. Those require expenses. So I think there was an
7 economic motivation as well. But I think the motivation was --
8 was split between the economic motivation and the motivation of
9 showing how smart he was and beating the government at
10 something that he viewed as an exploitable loophole in the law.

11 The second factor that the government points to is
12 Mr. Pappas' appropriation of other people's identities and
13 impersonation of several of the people on whose behalf he
14 claimed unemployment benefits. Frankly, if you listen -- the
15 persons he impersonated were female in telephone calls to the
16 unemployment insurance people. If you listen to the phone
17 calls -- and I think the investigation bears this out -- nobody
18 was fooled for two seconds that he was the person he was
19 pretending to be. It was obviously somebody impersonating
20 somebody of a different gender. And again, this wasn't so much
21 indicative of his incredible deceitfulness as a sort of
22 detachment from reality in thinking he could get away with this
23 sort of half funny conduct vis-à-vis some government officials
24 on the other end of the phone.

25 It is true that he misused other people's identities.

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1 The government concedes that in many instances that was with
2 their permission. And I believe that all of the instances in
3 which it was not with their permission, it was relatives and he
4 sort of thought it was permissible. So again, this is a little
5 bit different a category of an offense than somebody who steals
6 credit card information and, you know, runs around on a buying
7 spree completely misappropriating somebody else's identity.

8 And then the third factor that the government cites is
9 the obstruction of justice, and it's clear if you look through
10 exactly what it was that Mr. Pappas was advising the person on
11 whose behalf he fraudulently claimed unemployment benefits to
12 say, that you can't defend it as it was all legitimate, but
13 mostly what Mr. Pappas said to the individual was, get a lawyer
14 and don't talk to the investigators. He shared with the
15 individual his misguided view that this investigation was
16 legally baseless and that what he in fact was doing was proper.
17 The advice that he gave to the person to talk about the
18 offense, not completely accurate. He certainly didn't tell
19 them, tell the truth and don't hesitate to talk to them. But
20 it tied into this fanciful theory that if you actually did a
21 certain amount of work and I could claim that it was really on
22 behalf of one of these companies and if you assume that I paid
23 you this amount of money, you know, then you would be entitled
24 to unemployment benefits, the individual in question did in
25 fact do some work for Mr. Pappas, was in fact paid some income.

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1 None of it justifies what happened, and we're not attempting to
2 claim that, but again, it's not a classic obstruction of
3 justice. As the government emphasizes, Mr. Pappas knew he was
4 under investigation and was himself talking with the
5 investigators, trying to justify what he did.

6 So at the -- and all of this is against the background
7 of this is an individual who is clearly troubled and was not
8 getting the proper medication during the course of time when he
9 was engaged in this conduct. As I said at the outset, I think
10 that's, in significant measure, his own fault. He didn't seek
11 out the appropriate treatment for his mental health issues.
12 It's not like somebody else dropped the ball. But the fact of
13 the matter is, his mental state was not the mental state of
14 somebody who deliberately goes out to violate the law and cheat
15 the government out of this money. It doesn't rise to the level
16 of a legal defense, but it's a relevant factor to be
17 considered.

18 My submission is that at the end of the day, what
19 Mr. Pappas needs -- let me back up before I get to that.

20 When I first came to represent Mr. Pappas, he was in a
21 state where he was not properly medicated, and I can attest to
22 the fact that he was a very difficult client to deal with. We
23 ultimately got him properly evaluated, partially from Dr. Drob,
24 partially from personnel at the MCC, got him properly
25 medicated, and it's been much easier, frankly, to represent him

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1 since that happened. I think a large portion of what went on
2 here is untreated mental health issues. And my submission is
3 that at the end of the day, what he really needs is mental
4 health treatment, which can be accomplished as a condition of
5 supervised release rather than further incarceration.

6 Now the second issue -- and it's not as important as
7 the mental health issue but it's also an important issue -- is
8 the family circumstances that Mr. Pappas finds himself in,
9 which, again, I think both go to what drove him to commit these
10 offenses. He has very difficult family circumstances with two
11 children who have addiction issues and mental health issues of
12 their own, and I think coping with that situation has been very
13 difficult for him. The government in its sentencing submission
14 says, well, that shouldn't be taken into consideration in
15 sentencing because those two children are adults, they don't
16 live at home. The fact of the matter is, they are living at
17 home currently. They've relapsed in their addiction problems
18 and they're living in the family residence. Mr. Pappas' wife
19 is absolutely overwhelmed with trying to cope to -- with
20 household management, with the two kids who are difficult.
21 Mr. Pappas has been incarcerated for 14 months now, almost 14
22 months. I think it was the beginning of July that he was first
23 arrested. And, frankly, it would be of great assistance to the
24 family for him to be able to get back and help take care of
25 household matters. Mrs. Pappas has healthcare issues of her

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1 own that she's postponed dealing with because she can't deal
2 with them while also managing the house and managing the two
3 kids who have problems, and Mr. Pappas' presence at home would
4 be of great assistance just in helping to do simple things like
5 pay the bills and get repairs done and buying groceries but
6 also to keep on top of the two kids who need -- I say kids,
7 they're adults, but they're his children, who really need
8 supervision of a sort to get to the treatment programs that
9 they need and to do the things that they need to do to
10 straighten out their lives.

11 I said it before, but the conclusion is this. I think
12 this is not a case where anybody is served by further
13 incarceration. What Mr. Pappas needs is mental health
14 services. The probation department recommended that as a
15 condition of supervised release after his period of
16 incarceration. My submission is, he's been in for 14 months
17 already, and really what he needs is the mental health services
18 as a condition of supervised release. He's got a family that's
19 struggling. It's a family that obviously has a lot of
20 problems, but I think the family will do better if Mr. Pappas
21 can be there to assist them than if he's incarcerated for
22 another period of time.

23 THE COURT: I'd like you to address a comment that
24 Dr. Drob makes, which is troubling. This is from his report.
25 "Mr. Pappas is transparently manipulative in his efforts to

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1 utilize and perhaps exaggerate his mood symptoms in an effort
2 to gain some real or imagined legal or financial advantage."
3 And then Dr. Drob goes on to comment that, "It is thus
4 difficult to ascertain his actual condition."

5 MR. KLOTZ: Right. I think that's an absolutely
6 accurate statement. I've spoken to Dr. Drob at length in
7 addition to reading his report. And I think what he would say,
8 because he said it to me, is that manipulative behavior is
9 itself very often a symptom of mental health issues. A lot of
10 mentally ill people are also manipulative, and it doesn't mean
11 that they're not mentally ill. It's in fact very often a
12 behavior set that exacerbates the problem, because their
13 manipulation, frankly, is very often transparent and just makes
14 people that they deal with even more frustrated in dealing with
15 them. I think -- and I'll speak from personal experience. I
16 think that's an accurate statement of the way Mr. Pappas
17 behaved prior to the time that he was more properly medicated
18 at the Metropolitan Correctional Center. But I don't think
19 Dr. Drob and I don't think any of the other numerous mental
20 health professionals who have examined Mr. Pappas over the
21 years has the slightest doubt that he in fact suffers from
22 severe mental health issues. I think -- and Dr. Drob, by the
23 way, was not the only person to make that observation. I think
24 in the prior record -- but I'm not certain that it works its
25 way into the report -- one of the other doctors, maybe back ten

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1 years ago, made a similar observation. But it wasn't to the
2 effect of: Here is somebody who is faking mental illness. It
3 was to the effect of: Here's somebody who has very serious
4 problems but one of the symptoms of the problems is that
5 they're manipulative and not entirely honest about themselves
6 and that makes it even more difficult to understand exactly
7 what's going on. So I don't want to discount the comment
8 because it is an important, you know, factor to take into
9 consideration, but I don't think it undercuts the conclusion
10 that he's an individual with mental health issues and that
11 those mental health issues -- I mean, the manipulativeness, you
12 can actually see in the offense conduct. It's manipulating
13 relatives, manipulating friends, manipulating other people that
14 he knew to go along with the scheme.

15 THE COURT: All right. Mr. Pappas, is there anything
16 you wish to say before the court imposes sentence?

17 THE DEFENDANT: Yes. First of all, I'm very sorry for
18 what I've done, but I was under tremendous pressure based on
19 the fact that I have two children that are addicted to opiates
20 and it's a terrible situation to be under, having those two
21 kids. And from the auto accident, it made me TBI and made my
22 bipolar disorder much more serious than it was, and for many
23 years I wasn't properly medicated and I was made manic, and
24 while I was manic, I committed this crime. But now that I've
25 got the proper medication, I'm ready to become a productive

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1 member of society. And I'm just asking for a second chance.
2 And I want to go back and help my family because once you
3 sentence me today, the \$2200 a month that my family is getting
4 in disability income is going to be cut off and I'm not sure
5 how my family's going to survive, your Honor, so all I'm asking
6 is, the quicker I get back to my family, the quicker they're
7 going to get the support they need from my disability income so
8 things -- I'm just asking for another chance, your Honor, and I
9 really need my family to be able to survive. They need me.
10 And thank you for your time.

11 THE COURT: Mr. Capone, is there anything you wish to
12 say?

13 MR. CAPONE: Your Honor, I'll be very brief, and
14 really, most of it is in my submission.

15 Obviously there's no dispute that Mr. Pappas does have
16 some mental health problems, and I understand that is part of
17 who he is, which is a relevant consideration that the court can
18 take into account. But I still don't quite see how -- the
19 direct connection between the -- those issues and the crime
20 here. The suggestion is that his mental state gave him these
21 delusions of grandiosity I think was the suggestion, made him
22 think he can pull one over the system and be particularly
23 manipulative, and I guess that's what Dr. Drob found as well,
24 that this is a manipulative person. But maybe the defendant is
25 just manipulative. I don't know that that's a mental health

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1 issue. This is clearly a complex and lengthy crime, that
2 there's no suggestion that the defendant thought he was
3 entitled to that money. He knew what he was doing, he knew he
4 was attempting to outsmart the government. It involved a lot
5 of work. And so I think for that reason, it was a serious
6 crime and the defendant -- this is a defendant who is certainly
7 in need of deterrence I think in light of the overall picture
8 here, of the complexity of the crime, his efforts to attempt
9 to -- not to be arrested or not to be charged when he figured
10 out that the government was on to him. I don't think -- I do
11 think it's classic obstruction. The defendant sat down with a
12 witness and told him to lie to the government and came up with
13 a story that the witness should give about work that never
14 happened, and payments that he said were genuine that were not
15 genuine. The defendant did talk to investigators, but it's not
16 as if that conversation itself was full of truths. The
17 defendant drove another witness -- when another witness went in
18 to speak with investigators before the defendant was charged,
19 the defendant was outside waiting in his car. He was the one
20 who drove her there. He was keeping close tabs on the
21 investigation and doing everything he could to make sure it
22 didn't result in his arrest; again, further indicia of
23 manipulativeness and somebody who's in substantial need of
24 deterrence.

25 So for all of those reasons and as set forth in our

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1 submission, the government thinks that a guidelines sentence is
2 appropriate.

3 THE COURT: All right. In deciding upon an
4 appropriate sentence, I have considered all the factors listed
5 in Title 18 United States Code Section 3553(a), including the
6 nature and circumstances of Mr. Pappas' offense, his personal
7 history and characteristics, the need for the sentence imposed
8 to reflect the seriousness of the offense, to promote respect
9 for the law, to provide just punishment, and to afford adequate
10 deterrence.

11 Beginning with the nature and circumstances of the
12 offense, the charge against Mr. Pappas stems from an
13 investigation by the Department of Labor which uncovered his
14 scheme to defraud the New York State Unemployment Insurance
15 Fund. From about July 2011 to about August 2012, Mr. Pappas
16 pretended to employ members of his family and others at two
17 companies that he controlled. He created fake payroll records
18 for these fake employees, indicating that they were paid
19 exactly the minimum amount necessary to qualify for
20 unemployment benefits. Mr. Pappas then pretended to be those
21 employees and filed for unemployment benefits under their names
22 after they had ostensibly been fired. After the fake employees
23 qualified for unemployment benefits, Mr. Pappas arranged for
24 those benefits to be paid into bank accounts that he
25 controlled.

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1 In perpetrating the scheme, Mr. Pappas made telephone
2 calls to the Unemployment Insurance Fund pretending to be the
3 fake employees, including, as Mr. Klotz said, female employees,
4 and he used their personal information on at least some
5 occasions without their permission or knowledge. Through this
6 scheme Mr. Pappas defrauded the New York State Unemployment
7 Insurance Fund of approximately \$200,000.

8 Sometime in early 2012, Mr. Pappas learned that he was
9 under investigation. He did not stop his fraudulent behavior.
10 However, instead he instructed one of the fake employees to lie
11 to the authorities and say that he had worked for Mr. Pappas.

12 Back on April 15th, Mr. Pappas pleaded guilty to a
13 superseding information charging him with one count of wire
14 fraud.

15 Now let me say that with respect to the crime, it
16 clearly involved a lot of thought and there were a lot of balls
17 to keep up in the air because he was making multiple
18 applications on behalf of multiple people, and then had to
19 contact the fund on behalf of them on something like a weekly
20 basis to maintain their eligibility. So there were a lot of
21 moving parts here. But having said that, there is a whacky
22 aspect to this, and when I say whacky, I mean, for example,
23 calling the unemployment people and pretending to be a woman.
24 It's indicative of someone who's not entirely stable.

25 With respect to Mr. Pappas' personal history, he's 54.

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1 He was raised in Jamaica, Queens. His father left the family
2 when he was 14, and he essentially became the head of the
3 household. He has two siblings, one of whom is mentally
4 disabled. Mr. Pappas is married and has three children in
5 their 20s, two of whom are addicted to heroin and have been in
6 and out of residential drug treatment programs. The other
7 child is in college.

8 Mr. Pappas' wife is employed at a bank but suffers
9 from a blood condition and has reportedly had difficulty
10 managing her illness as well as the problems of her family
11 while Mr. Pappas has been detained. And as Mr. Klotz
12 indicated, he has been detained since July 1st of last year.

13 Mr. Pappas is an intelligent man. He has a bachelor's
14 degree from St. John's University. He began working in the
15 printing industry in 1982, started his own printing business in
16 1985, and between 1985 and 2001 owned a series of highly
17 successful commercial printing businesses, which were quite
18 lucrative. He has substantial assets, including several homes,
19 although he has put these assets under the name of an entity
20 called Pappas Family Limited Partnership. Mr. Pappas has no
21 criminal record. He was diagnosed with ADHD as a child but
22 appears to have performed at a very high level until about
23 2000, when he suffered a car accident, which has been alluded
24 to this morning. The airbag in the car inflated, and some
25 physicians believe that Mr. Pappas suffered a traumatic brain

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1 injury at that time. Certainly in the years after the
2 accident, a number of doctors have diagnosed Mr. Pappas with
3 suffering from significant mental illnesses, including bipolar
4 disorder, schizophrenia, posttraumatic stress disorder, and
5 depression, and since 2002 he has taken a wide variety of
6 psychiatric medications for these conditions.

7 Mr. Pappas has other medical conditions, including
8 hearing loss, speech problems, and pain in his right leg caused
9 by the car accident. It has been difficult to ascertain the
10 precise nature of the defendant's mental condition and, as
11 Mr. Klotz said this morning, what connection, if any, exists
12 between his mental condition and his criminal conduct is the
13 key inquiry from my perspective.

14 I conclude that this is one of those cases in which
15 Mr. Pappas' mental condition does not provide him with a legal
16 defense but nonetheless is relevant in terms of determining his
17 culpability. I have alluded to a forensic psychological
18 examination that was conducted by Dr. Sanford Drob of
19 Mr. Pappas in November and December 2012, and I have studied
20 that report. Dr. Drob found Mr. Pappas to be highly
21 intelligent. He further concluded that nothing in prior
22 testing, or in the tests that he himself performed, indicates
23 that the defendant suffers from a severe neuropsychological
24 disorder, and as I quoted a moment ago, Dr. Drob made reference
25 to the fact that Mr. Pappas has a tendency to be "transparently

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1 manipulative and may exaggerate his symptoms in an effort to
2 gain some type of advantage." And Dr. Drob did comment that in
3 light of this characteristic, it is "difficult to ascertain his
4 actual condition." Having said that, Dr. Drob concluded that
5 Mr. Pappas suffers from a "clinically significant psychological
6 disorder, characterized by depression, irritability, and mood
7 swings." And I might say that Dr. Drob's findings in this
8 regard are consistent with more than ten years of psychological
9 and psychiatric examinations that have been conducted of
10 Mr. Pappas and consistent with the fact that he's been
11 prescribed a wide variety of serious psychiatric medications,
12 indicating that many other doctors before Dr. Drob had
13 concluded that Mr. Pappas suffers from serious psychological
14 disorders.

15 Now while I have concluded that Mr. Pappas' mental
16 state did not prevent him from being fully aware during the
17 time that he was defrauding the unemployment insurance fund
18 that what he was doing was wrong and illegal, I further
19 conclude that his mental condition is relevant to an
20 appropriate sentence.

21 The guidelines recommend a sentence of between 27 and
22 33 months. Probation department has recommended a sentence of
23 27 months. The defendant seeks a sentence of time served. And
24 as I've indicated, he has been detained since July, early July
25 2012, and thus is approaching 14 months' incarceration. The

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1 government seeks a guidelines sentence.

2 With all of this in mind, I will now describe the
3 sentence I intend to impose and then I'll ask the parties if
4 there's anything further they wish to say.

5 With respect to imprisonment, I intend to impose a
6 sentence of time served. I conclude that the amount of
7 incarceration that the defendant has already served has
8 provided a sufficient deterrence to him with respect to future
9 criminal conduct, and in light of his mental condition, I do
10 tend to agree with Mr. Klotz that what he needs most at this
11 point is intensive psychiatric treatment.

12 With respect to supervised release, I intend to impose
13 a sentence of three years. Supervised release will be served
14 on the following conditions:

15 The defendant shall not commit another federal, state,
16 or local crime; he shall not illegally possess a controlled
17 substance; he shall not possess a firearm or destructive
18 device; he shall cooperate in the collection of DNA as directed
19 by the probation officer; he shall refrain from any unlawful
20 use of a controlled substance; he shall submit to one drug
21 testing within 15 days of placement on supervised release and
22 at least two unscheduled drug tests thereafter, as directed by
23 the probation officer.

24 I intend to impose the first 13 standard conditions of
25 supervised release, along with the following special

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1 conditions:

2 The defendant shall provide the probation office with
3 access to any requested financial information; the defendant
4 shall not open any additional lines of credit without the
5 approval of the probation officer; the defendant shall
6 participate in a mental health program approved by the US
7 Probation Office; he shall continue to take any prescribed
8 medications unless otherwise instructed by the healthcare
9 provider; I authorize the release of available psychological
10 and psychiatric evaluations and reports to the healthcare
11 provider as approved by the probation office. The defendant
12 shall contribute to the cost of services rendered not covered
13 by third-party payment.

14 The defendant is to report to the nearest probation
15 office within 72 hours of release from custody.

16 The guidelines recommend a fine of between \$6,000 and
17 \$60,000. The defendant has substantial assets. I intend to
18 impose a \$6,000 fine.

19 I intend to impose a \$100 special assessment.

20 As to restitution, I intend to order that the
21 defendant make restitution to the New York State Unemployment
22 Insurance Fund in the amount of \$192,601.

23 I also intend to execute the consent preliminary order
24 of forfeiture which has been handed up this morning.

25 Mr. Klotz, anything further you wish to say?

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1 MR. KLOTZ: No, your Honor.

2 THE COURT: Mr. Pappas, anything further you wish to
3 say?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Mr. Capone, anything else from the
6 government?

7 MR. CAPONE: No, your Honor.

8 THE COURT: Now, Mr. Pappas, for the reasons I just
9 stated, it is the judgment of this court that you be sentenced
10 to time served and three years of supervised release.

11 Your supervised release will be subject to the
12 mandatory, standard, and special conditions I just listed.

13 You are ordered to pay a fine of \$6,000, which will be
14 due immediately, and a special assessment in the amount of
15 \$100.

16 You are ordered to pay restitution in the amount of
17 \$192,601 to the New York State Unemployment Insurance Fund.
18 Payments are to be made to the Clerk, United States District
19 Court, 500 Pearl Street, New York, New York, 10007, for
20 disbursement to the New York State Unemployment Insurance Fund.
21 Restitution is to be paid in full by August 14th, 2014.

22 Are there any open counts, Mr. Capone?

23 MR. CAPONE: Your Honor, there is an underlying
24 indictment, and the government would move to dismiss that.

25 THE COURT: All right. That motion is granted.

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1 Mr. Pappas, I'm required to advise you of your appeal
2 rights. You can appeal your conviction if you believe that
3 your guilty plea was unlawful or involuntary or if there was
4 some other fundamental defect in the proceedings that was not
5 waived by your guilty plea. You also have a statutory right to
6 appeal your sentence under certain circumstances. With few
7 exceptions, any notice of appeal must be filed within 14 days
8 of judgment being entered in your case. Judgment will likely
9 be entered today. Mr. Klotz will discuss with you whether or
10 not you wish to file a notice of appeal. If you're not able to
11 pay the cost of an appeal, you pay apply for leave to appeal *in*
12 *forma pauperis*. If you request, the clerk of the court will
13 prepare and file a notice of appeal on your behalf.

14 Defense counsel has requested that his sentencing
15 submission be sealed because it discusses the defendant and his
16 family's medical condition. That application is granted.

17 Is there anything further?

18 MR. CAPONE: No, your Honor. The government's
19 submission I guess will -- I also filed that under seal, so it
20 should remain under seal as well.

21 THE COURT: All right. Then it will remain under
22 seal.

23 MR. CAPONE: Thank you, your Honor.

24 MR. KLOTZ: Nothing further, your Honor.

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